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20 *Counsel for Proposed Amici Curiae Members of Congress*

13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF WASHINGTON
15 AT YAKIMA

16 STATE OF WASHINGTON, et al.,

17 *Plaintiffs,*

18 v.

19 DONALD J. TRUMP, in his official
20 capacity as President of the United
States of America, et al.,

21 *Defendants.*

22 Case No. 1:20-cv-3127-SAB

23 MOTION OF MEMBERS OF
24 CONGRESS FOR LEAVE TO FILE
25 BRIEF AS *AMICI CURIAE*
26 IN SUPPORT OF PLAINTIFFS'
27 MOTION FOR PRELIMINARY
28 INJUNCTION

29 Noted for: September 17, 2020
30 Without Oral Argument

31 MOTION OF MEMBERS OF CONGRESS FOR
32 LEAVE TO FILE BRIEF AS *AMICI CURIAE*
33 IN SUPPORT OF PLAINTIFFS
34 (Case No. 1:20-cv-3127-SAB)

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1 Pending before the Court is Plaintiffs' motion for a preliminary injunction,
2 seeking to bar the U.S. Postal Service from continued implementation of certain
3 changes that have significantly affected postal service throughout the nation and that
4 will further interfere with the daily lives of Americans and the November 2020
5 election without the requested relief. The Members of Congress listed herein
6 respectfully request leave to file the accompanying proposed *amici curiae* brief in
7 support of Plaintiffs' motion.

8 Proposed *amici curiae* Richard Blumenthal, Tammy Baldwin, Michael F.
9 Bennet, Cory A. Booker, Sherrod Brown, Benjamin L. Cardin, Thomas R. Carper,
10 Catherine Cortez Masto, Tammy Duckworth, Richard J. Durbin, Kirsten Gillibrand,
11 Mazie K. Hirono, Amy Klobuchar, Patrick Leahy, Edward J. Markey, Jeffrey A.
12 Merkley, Jack Reed, Jacky Rosen, Bernard Sanders, Jeanne Shaheen, Tina Smith,
13 Chris Van Hollen, Elizabeth Warren, Sheldon Whitehouse, and Ron Wyden
14 (collectively, "Members of Congress") are members of the U.S. Senate, many of
15 whom served when key components of the nation's laws governing the U.S. Postal
16 Service—including provisions pertinent to this case—were drafted, debated, and
17 passed. Together, these elected officials represent the states of Connecticut,
18 Wisconsin, Colorado, New Jersey, Ohio, Maryland, Delaware, Nevada, Illinois,
19
20

1 New York, Hawaii, Minnesota, Vermont, Massachusetts, Oregon, Rhode Island, and
 2 New Hampshire.¹

3 Based on their experience serving in Congress, the proposed *amici* understand
 4 that the Postal Reorganization Act of 1970, Pub. L. No. 91-375, 84 Stat. 719 (Aug.
 5 12, 1970) (codified at 39 U.S.C. § 101 *et seq.*), as amended by the Postal
 6 Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, 120 Stat. 3198
 7 (Dec. 20, 2006) (codified at 39 U.S.C. § 3600 *et seq.*), was designed to ensure that
 8 management of the Postal Service remains free from partisan politics and
 9 accountable to the American public, particularly when the Postal Service seeks to
 10 make nationwide changes in the nature of postal services. They therefore have a
 11 substantial interest in ensuring that this Court recognize that when the Postal Service
 12 and Postmaster General fail to follow the procedures set forth in 39 U.S.C. § 3661—
 13 which requires that the Postal Regulatory Commission and members of the public
 14 have the opportunity to weigh in before the Postal Service implements certain
 15 changes—they not only violate the plain text of § 3661 but also act counter to
 16 Congress’s plan in enacting that legislation.

17 This Court “has ‘broad discretion’ to appoint *amicus curiae*.” *Skokomish*
 18 *Indian Tribe v. Goldmark*, No. C13-5071, 2013 WL 5720053, at *1 (W.D. Wash.
 19

20 ¹ A full listing of proposed *amici* appears in the attached Appendix.

1 Oct. 21, 2013) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982),
 2 *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995)). “District
 3 courts frequently welcome amicus briefs from non-parties if the amicus has unique
 4 information or perspective that can help the court beyond the help that the lawyers
 5 from the parties are able to provide.” *Pakootas v. Teck Cominco Metals, Ltd.*, No.
 6 CV-04-256-LRS, 2011 WL 13238552, at *1 (E.D. Wash. Aug. 25, 2011) (quoting
 7 *Sonoma Falls Developers v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925
 8 (N.D. Cal. 2003)). In addition, participation of *amici curiae* may be appropriate
 9 “where legal issues in a case have potential ramifications beyond the parties directly
 10 involved.” *Id.*

11 An *amicus* brief is “designed to supplement and assist in cases of general
 12 public interest, supplement the efforts of counsel, and draw the court’s attention to
 13 law that might otherwise escape consideration.” *Cmtv. Ass’n for Restoration of*
 14 *Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999)
 15 (citing *Miller-Wohl Co., Inc. v. Commissioner of Labor and Indus.*, 694 F.2d 203,
 16 204 (9th Cir. 1982)); *see also, e.g., Russell v. Bd. of Plumbing Exam’rs*, 74 F. Supp.
 17 2d 349, 351 (S.D.N.Y. 1999) (“The primary role of the *amicus* is to assist the Court
 18 in reaching the right decision in a case affected with the interest of the general
 19 public.”); *Skokomish Indian Tribe*, 2013 WL 5720053, at *2 (granting leave to file
 20 because proposed *amici* may have “unique information or perspective that can help

1 the court"); *Pakootas*, 2011 WL 13238552, at *1 (same, and recognizing "legal
 2 issues in this case have potential ramifications beyond the parties directly
 3 involved"). There is no requirement that *amici* must be totally disinterested. *Funbus*
 4 *Systems, Inc. v. State of Cal. Public Utilities Com'n*, 801 F.2d 1120, 1125 (9th Cir.
 5 1986); *Hoptowit*, 682 F.2d at 1260 (upholding district court's appointment of
 6 Department of Justice and United States Attorney of Eastern District of Washington
 7 as *amici curiae* though they supported only one party's arguments).

8 Here, the proposed *amici curiae* brief on behalf of Members of Congress
 9 satisfies these standards. It discusses, in depth, the federal law that Congress passed
 10 to require the Postal Service to follow certain procedures whenever the Postal
 11 Service seeks to change the nature of postal services in a way that will generally
 12 affect service on a substantially nationwide basis. As the brief explains, by failing
 13 to request an opinion from the Postal Regulatory Commission before making certain
 14 recent changes, the Postal Service has violated federal law and acted contrary to
 15 Congress's plan in passing that law.

16 Counsel for all parties have consented to the filing of this brief. If the Court
 17 grants the motion, the Members of Congress request that the brief be considered filed
 18 as of the date of this motion.

19 For the foregoing reasons, leave to file the proposed *amici curiae* brief should
 20 be granted.

MOTION OF MEMBERS OF CONGRESS FOR
 LEAVE TO FILE BRIEF AS *AMICI CURIAE*
 IN SUPPORT OF PLAINTIFFS
 (Case No. 1:20-cv-3127-SAB) - 4

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1 Dated: September 11, 2020.

2 Respectfully submitted,

3 CALFO EAKES LLP

4 By /s/ Emily Dodds Powell

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18 *Congress*

1 APPENDIX:

2 LIST OF PROPOSED *AMICI*

3 Blumenthal, Richard
4 Senator of Connecticut

5 Baldwin, Tammy
6 Senator of Wisconsin

7 Bennet, Michael F.
8 Senator of Colorado

9 Booker, Cory A.
10 Senator of New Jersey

11 Brown, Sherrod
12 Senator of Ohio

13 Cardin, Benjamin L.
14 Senator of Maryland

15 Carper, Thomas R.
16 Senator of Delaware

17 Cortez Masto, Catherine
18 Senator of Nevada

19 Duckworth, Tammy
20 Senator of Illinois

Durbin, Richard J.
Senator of Illinois

Gillibrand, Kirsten
Senator of New York

Hirono, Mazie K.
Senator of Hawaii

1 LIST OF PROPOSED *AMICI* – cont'd

2 Klobuchar, Amy
3 Senator of Minnesota

4 Leahy, Patrick
5 Senator of Vermont

6 Markey, Edward J.
7 Senator of Massachusetts

8 Merkley, Jeffrey A.
9 Senator of Oregon

10 Reed, Jack
11 Senator of Rhode Island

12 Rosen, Jacky
13 Senator of Nevada

14 Sanders, Bernard
15 Senator of Vermont

16 Shaheen, Jeanne
17 Senator of New Hampshire

18 Smith, Tina
19 Senator of Minnesota

20 Van Hollen, Chris
21 Senator of Maryland

22 Warren, Elizabeth
23 Senator of Massachusetts

24 Whitehouse, Sheldon
25 Senator of Rhode Island

26 Wyden, Ron
27 Senator of Oregon

APPENDIX
(Case No. 1:20-cv-3127-SAB) - 2A

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

Dated: September 11, 2020.

/s/ *Erica Knerr*

Erica Knerr

CERTIFICATE OF SERVICE
(Case No. 1:20-cv-3127-SAB) - 1

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